IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Civil Writ Petition No.2136/1992

Ranveer Singh S/o Bharat Singh
...petitioner
Versus
1. Rajasthan Gramin Bank, B-9 Bodhvihar, Alwar through its Managing Director

2. Mr. Ashok Kumar Mathur S/o Shri Pyare Lal
...respondents

Date of Judgment ::: 25th July, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Dr. Saugath Roy, Counsel for petitioner
Shri R.S. Mehta, Counsel for respondent No.1
None present for respondent No.2

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//Reportable//

By the Court:-

Petitioner filed the present writ petition under Article 226 of the Constitution of India with the following prayers -

> "(i) issue an appropriate writ, order or direction in the nature thereof quashing the seniority list dated 22.8.89 (Ann.8) and restoring the seniority list position which was available to the petitioner prior to that;
>
> (ii) any other appropriate order or direction which may be deemed just and proper in the facts and circumstances of the case, may kindly be passed;

(iii) costs of the petition may kindly be awarded in favour of the petitioner;"

Facts, in brief, necessary for disposal of the writ petition as pleaded therein, are that the petitioner applied to the respondent-Bank for the post of Lower Division Clerk (for short, 'L.D.C.'). Vide letter dated 25th January, 1983 (Annexure-1) the respondent-Bank informed the petitioner that a waiting-list (panel) has been prepared on the basis of written-examination and interview, which will remain in force up-to 21st January, 1984, and name of petitioner is mentioned at Serial No.1 of Part-2 of the said list. The respondent-Bank, vide its letter dated 2nd February, 1983 (Annexure-2), giving reference to its earlier letter dated 25.1.1983, appointed the petitioner on the post of L.D.C. In Para No.8 of the letter dated 2.2.1983 (Annexure-2) it was informed to the petitioner that a training will start from 10th February, 1983, therefore, he should submit his joining-report in the Head Office positively by 9th February, 1983. The petitioner gave his consent letter dated 4th February, 1983, to join the post of L.D.C. and to attend training programme of the Bank from 10th February, 1983. The petitioner appeared before the respondent-Bank on 9th February, 1983, and produced all original certificates for

verification. It is pertinent to mention here that the requisite qualification for the post of L.D.C. in the respondent-Bank was Higher Secondary with 1st Division and the original certificate and mark-sheet of the Higher Secondary Class with 1st Division was made available by the petitioner to the respondent-Bank, but the respondent-Bank called the petitioner to submit the original mark-sheet of B.Com. (Final Year), which was not available with the petitioner at that time as he had submitted the same in the University with the form filled-in by him to appear in M.Com. (Previous Year) Examination, therefore, he sought some time from the respondent-Bank for production thereof. The respondent-Bank, vide its letter dated 15th February, 1983, informed the petitioner of extension of joining-period by one week and it was clarified that in case on this account any seniority is affected then the petitioner will be responsible for it. Thereafter the petitioner attended the training and continued in the service of the respondent-Bank and performed his duties. The respondent-Bank issued provisional seniority-lists dated 28th June, 1984 (Annexure-4), 11.9.1989 (Annexure-5), 12.5.1987 (Annexure-6) and 15.7.1989 (Annexure-7), showing his name at Serial Nos.76, 61, 23 and 23, respectively. The petitioner pleaded that in all the above referred

seniority-lists, the persons, namely, Sarva Shri (1) Ashok Kumar Mathur, (2) Suresh Kumar Sharma, (3) Shiv Prasad, (4) Ravi Prakash Mathur and (5) Rajendra Singh Shekhawat, were consistently shown junior to him. The petitioner also pleaded that all of a sudden the respondent-Bank issued seniority-list dated 22.8.89 (Annexure-8) wherein name of petitioner has been placed at Serial No.35 in place of Serial No.23 as shown in earlier seniority-lists, and the aforesaid five persons, who were junior to him, have been shown senior to the petitioner. Thereafter, the petitioner made a representation dated 11.9.1989 (Annexure-9), but the same has not been disposed of in spite of his repeated requests. The respondent-Bank has given promotions to persons junior to the petitioner on the basis of seniority-list dated 22.8.89 (Annexure-8).

The respondent-Bank, in its reply to the writ petition, pleaded that the petitioner was asked to present himself in the Head Office on 9th February, 1983, as training was to start from 10th February, 1983. The petitioner filed an application on 9th February, 1983, praying for extension of time to file his original mark-sheet of B.Com. (Final Year) and therein it was also mentioned by him that the Bank reserves its right to

determine his seniority. The request of the petitioner was accepted and one week's time was allowed to the petitioner to join the post, with a further condition that in case on this account his seniority is affected then he himself will be responsible for it. It was also pleaded that petitioner joined his post later than the so-called junior persons. The seniority list (Annexure-9) has been prepared on the basis of date of joining/length-of-service. An objection has also been taken by the respondent-Bank that so-called junior persons to the petitioner are necessary parties but they have not been impleaded as party to the writ petition, therefore, the writ petition is liable to be dismissed on this ground also.

The petitioner thereafter filed his rejoinder and explained the position that he gave his consent letter dated 4th February, 1983, itself and also appeared on 9th February, 1983, and produced all required original certificates/mark-sheets. The requisite qualification for the post of L.D.C. was Higher Secondary with 1st Division, and the certificate/mark-sheet of the Higher Secondary with 1st Division was produced before the respondent-Bank. The respondent-Bank insisted upon filing of the mark-sheet of B.Com. (Final Year) which was not available at that

moment as the same had been submitted by him to the University with his form of M.Com. (Previous) Examination, therefore, he requested the respondent-Bank for extension of time to submit the mark-sheet of B.Com. (Final Year) and not for joining the post or to attend training. However, the respondent did not allow him to join the duty and extended the joining-period by one week accepting his request which was only for producing the mark-sheet of B.Com. (Final Year) and there was no request to extend the joining-period.

The learned counsel for the petitioner argued that from the letter dated 25.1.1983 (Annexure-1) it is clear that the name of the petitioner was placed at Serial No.1 in the merit-list and appointment order of the petitioner was issued on 2nd February, 1983, and he was required to join the post before 9th February, 1983. The petitioner gave his consent letter on 4th February, 1983 which is clear from the letter dated 15th February, 1983 (Annexure-16) filed by the petitioner with the rejoinder. The respondent-Bank deliberately did not give any reference to the consent letter of the petitioner dated 4th February, 1983,s in its reply, and only referred to the letter dated 9th February, 1983 written by the petitioner for extension

of time to produce the original mark-sheet of B.Com. (Final Year), which was not even required, as the requisite qualification for the post of L.D.C. was only Higher Secondary with 1st Division and the mark-sheet of Higher Secondary with 1st Division was produced by the petitioner in the respondent-Bank, but the respondent-Bank insisted upon filing of the mark-sheet of B.Com. (Final Year), therefore, the petitioner left with no alternative except to file an application for grant of time to submit the same.

It is further contended that letter of appointment of the petitioner was issued on 2nd February, 1983 itself thereunder also appointing other similarly situated persons and, as he stood at Serial No.1 in the merit-list, he was rightly shown senior in the seniority-lists (Annexure-4 to Annexure-7) above the persons, namely, Shri Ashok Mathur and others, as per the provisions of Rule 13 of the Shekhawati Gramin Bank (Staff) Service Regulation, 1981 (for short, 'the Regulation of 1981'). He referred Seniority-lists dated 28.6.1984, 11.9.1986, 12.5.1987 and 15.7.1989 (Annexure-4 to Annexure-7), wherein his name was shown above the aforesaid junior persons. He also referred Rule 13 and as per sub-rule (2) thereof the inter-se

seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment. He, therefore, contended that as per sub-rule (2) of Rule 13 he was rightly assigned the seniority in the seniority-lists (Annexure-4 to Annexure-7) and all of a sudden, without any notice to the petitioner, his seniority was changed in the seniority-list dated 22.8.1989 (Annexure-8) and his position has been lowered down and he has been made junior from Shri Ashok Mathur and others. He also argued that his position in the seniority-lists (Annexures-4 to 7) was rightly placed, therefore, he did not make any representation and in case his seniority was going to be changed then it was the duty of the respondent-Bank to give him a notice and opportunity of personal hearing before changing his position in the impugned seniority-list dated 22.8.89 (Annexure-8), therefore, the action of the respondent-Bank is violative of the principles of natural justice. He also contended that thereafter a representation was given to the respondent-Bank by him i.e. Annexure-9, dated 11.9.89, but the respondent-Bank has not considered and decided it, and gave promotions to junior persons to him on the basis of the impugned seniority-list dated 22.8.89 (Annexure-8).

He, therefore, contended that seniority-list (Annexure-8) be quashed or petitioner may be assigned correct seniority i.e. above respondent No.2 and others.

The learned counsel for the respondent-Bank argued that the seniority-lists (Annexure-4 to Annexure-7) were only provisional seniority-lists and the final seniority-list dated 22.8.89 (Annexure-8) was issued after considering all representations of employees concerned. He also argued that the petitioner himself wrote a letter on 9th February, 1983 to extend the joining-period, which was extended reserving a right with the Bank to determine his seniority. Shri Ashok Mathur and other persons, who were appointed with the petitioner, joined their duties earlier than the petitioner, therefore, they have rightly been placed above the petitioner in the impugned seniority-list dated 22.8.89 (Annexure-8). He also argued that these so-called junior persons are necessary parties to the writ petition, but the petitioner has not impleaded them as parties therefore the writ petition is liable to be dismissed on the ground of non-joinder of necessary parties.

It is relevant to mention that during the pendency

of the writ petition the petitioner moved an application to implead Shri Ashok Kumar Mathur as respondent in the present writ petition, which was not opposed by the respondent-Bank and the said application was allowed by this Court and Shri Ashok Kumar Mathur was impleaded as respondent No.2 and notice of the writ petition was given to him, but, in spite of service of notice of the writ petition on him, neither he nor anyone appeared on his behalf in the case.

I have considered the submissions of learned counsel for both the parties and examined the record of the case.

There is no dispute that the petitioner was selected on the post of L.D.C. and his name was placed at Serial No.1 in the merit list. Appointment order was issued to the petitioner on 2.2.1983. The petitioner gave the letter of his consent to join the post on 4.2.1983. The petitioner appeared before the respondent on 9.2.1983 but he was not allowed to join the post as he did not have the original mark-sheet of B.Com. (Final Year). The requisite qualification for the post of L.D.C. was Higher Secondary with 1st Division and the mark-sheet of Higher

Secondary with 1st Division was produced by the petitioner, but for want of mark-sheet of B.Com. (Final Year), the respondent told the petitioner to move an application for extension of time, which was written by him on 9.2.1983, a copy of which has been placed on the record by the respondent as Annexure-R/1 to the reply to the writ petition, and a bare perusal thereof shows that in the said application dated 9.2.1983 a last line is also written by the petitioner that the Bank will have a right to determine his seniority. It appears that the application was given for extension of time for submitting the mark-sheet of B.Com. (Final Year) and the said line reserving the right with the respondent-Bank to determine the seniority was got written from the petitioner by the respondent Bank. The petitioner was newly appointed employee and wrote the same. However, after completion of training, all persons continued on their posts and in the seniority-lists (Annexure-4 to Annexure-7) dated 28.6.1984, 11.9.1986, 12.5.1987 and 15.7.1989, the name of the petitioner was placed above Shri Ashok Kumar Mathur, the respondent No.2 and other similarly situated persons, who were junior to the petitioner. Therefore, neither any occasion nor necessity arose for the petitioner to file any representation against the so-called provisional

seniority-lists (Annexure-4 to Annexure-7). In this connection, it is relevant to refer the Rule 13, which relates to seniority and inter-se seniority, which is reproduced as under:-

> **"Seniority**:
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> 13. (1) (a) Seniority of an officer or employee of the Bank in a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale.
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> (b) Where there are two or more officers of the same length of service in that grade or scale, their inter-se seniority shall be reckoned with reference to their seniority in the immediately preceding grade or scale or the previous cadre to which they belong in the Bank's service.
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> (c) Where there are two or more officers of the same length of service of such grade or scale or such previous cadre their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre; as the case may be. Provided that the interse seniority of the Field Officers or Accountants, vis-a-vis the Branch Managers, who were in the service of the Bank on the date on which the revised pay scales notified by the Ministry of Finance, Department of Economic Affairs, Banking Division letter No.2-17/RRB Dated the 29th April, 1980 are adopted by the Bank, may be so reckoned that all the Field Officers or Accountants rank junior to the than existing Branch Managers
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> (2) The inter-se seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank alloted to them at the time of such recruitment.

(3) .....”

The above quoted sub-rule (2) of Rule 13 shows that inter-se seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank alloted to them at the time of such recruitment. The respondent-Bank has not disputed that the petitioner was placed at Serial No.1 in the merit-list and as per the merit-list he was senior from the respondent No.2 Ashok Kumar Mathur and other similarly situated persons. The petitioner gave his consent on 4.2.1983 itself i.e. much before 9.2.1983 and in case the petitioner was not possessing his B.Com. (Final Year) mark-sheet with him on 9.2.1983, then he should have been allowed to join training by granting him time to submit the marks-sheet. The Bank itself rightly assigned him seniority during the period from 1982 to 1989 while publishing seniority-lists (Annexure-4 to Annexure-7) and the said act of the respondent-Bank was according to Rule 13 and the seniority of petitioner could not have been changed and in case it was necessary to change his seniority then it was incumbent on the part of the respondent-Bank to give him notice and an opportunity to represent his case.

It is clear from the pleading that the petitioner was not heard and given any opportunity to make a representation before issuing the impugned seniority-list dated 22.8.1989 (Annexure-8) whereby his seniority has been changed. The petitioner took the specific ground in the writ petition in this regard in sub-para (d) of Para 16 of the writ petition, which is reproduced as under:-

> "(d) that the seniority of the petitioner came to be altered while issuing the seniority list dated 22.8.89, without giving the petitioner any notice or opportunity of hearing. The impugned action thus deserves invalidation on the sole count of it being in patent breach of the wholesome principles of natural justice."

The respondent in its reply to the writ petition has denied the averments made in grounds (a) to (e) of the writ petition in general and no specific reply has been given that the petitioner was given an opportunity to make a representation before issuing the impugned seniority-list dated 22.8.89. Para 13 of the reply, relating to Para 16 of the writ petition, is also reproduced as under:-

> "13. That the averments made in Para 16 of the writ petition are denied and the averments made in grounds (a) to (e) of the writ petition are also denied. In view of the detailed facts submitted above, no further para-wise reply to this grounds are necessary at this stage and the respondent reserves its right to file detailed reply, in case it is found necessary."

The seniority of the petitioner was maintained as per his merit in the selection list by the respondent-Bank during the period from 1983 to 15th July, 1989, the date when the third seniority-list (Annexure-7) (according to the respondent it is provisional seniority-list) was issued. Therefore, he was recognized as senior from respondent no.2 Ashok Kumar Mathur by the respondent-Bank and his seniority has been changed only vide seniority-list dated 22.8.89 (Annexure-8) and said action of the respondent-Bank was violative of principles of natural justice, which has deprived the petitioner from his valuable right of seniority. The petitioner also gave representation dated 11.9.89 (Annexure-9) to the respondent-Bank, but till date the same has not been decided.

So far as the objection raised on behalf of the respondent that all affected persons have not been impleaded as party and the writ petition is liable to be dismissed on the ground of non-joinder of necessary parties is concerned, it is relevant to mention that the petitioner has already impleaded Shri Ashok Kumar Mathur as respondent No.2 in the writ petition, who was just junior to him in the earlier seniority-lists (Annexure-4

to Annexure-7) and now shown senior to him in impugned order (Annexure-8) but it would have been more better on the part of the petitioner to implead the persons placed at Serial No.24 to 34 in the impugned seniority-list dated 22.8.89, in the writ petition, but the petitioner impleaded only Ashok Kumar Mathur as respondent no.2, therefore, the order can be passed only against Ashok Kumar Mathur and not against other persons who are not before this Court. Now the options which are left for this Court are, either to dismiss the writ petition for non-impleadment of necessary party or to issue direction suo-motu to implead all affected persons as party and to issue notice of this writ petition to all of them or to issue direction to respondent-Bank to decide the matter of inter-se seniority in between petitioner and his batch candidates afresh after affording an opportunity to all of them keeping in view the observations given in earlier part of this judgment as well as in accordance with Rule 13. After considering all the facts and circumstances of the case I think it fit and proper that ends of justice will meet in issuing direction to respondent-Bank to decide the representation of the petitioner relating to inter-se seniority dispute in between the petitioner and his batch candidates afresh after hearing petitioner and

affected persons or batch candidates of the petitioner.

Consequently, the petitioner is directed to file a copy of the representation dated 11.9.89 (Annexure-9) as well as fresh representation, if he so chooses, to the respondent-Bank along-with certified copy of this order within a period of 15 days from today, and the respondent-Bank shall thereafter decide the same by reasoned order, after affording an opportunity of hearing to petitioner and all concerned persons, as referred above, within a period of three months, keeping in view the observations made here-in-above and the relevant Rules.

With the aforesaid observations and directions, the writ petition stands disposed of with no order as to costs.

(N.K. Jain) J.

//Jaiman//